

Notice of Allowability

Application No.

09/607,606

Examiner

Jeffrey A. Smith

Applicant(s)

YUEN, HENRY C.

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Amendment filed 11/14/05.
2. ☒ The allowed claim(s) is/are 6 and 9.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


Jeffrey A. Smith
Primary Examiner

Art Unit: 3625

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

Regarding claim 9

The prior art of record neither anticipates nor fairly and reasonably teaches a method of purchasing goods and services over the Internet, comprising, *inter alia*, the step of: submitting a starting bid over the Internet which is lower than the lowest posted price.

The most remarkable prior art of record is to Herz et al. (U.S. Patent No. 5,754,938) (hereafter: "Herz"), Godin et al. (U.S. Patent No. 5,890,138) (hereafter: "Godin"), Offutt (reported above), and Barni et al. (U.S. Patent No. 6,064,981) (hereafter: "Barni").

Regarding Herz and Godin: The reverse auction of Godin in combination with the data searching and sorting of Herz would not have fairly suggested the process recited. While Godin teaches a starting bid, there is no teaching or suggestion as to

Art Unit: 3625

what determines this value. The use of a prior determination of a lowest posted price as a starting bid in a reverse bidding process is not fairly and reasonably taught or suggested by Godin and Herz--let alone the step of submitting a starting bid which is lower than the lowest posted price.

Regarding Offutt: Offutt discloses a method of purchasing goods and services over the Internet (par. [0025]), comprising the steps of: obtaining (pars. [0043] and [0051]) a posted price (par. [0044]) associated with the goods and services from a first set of multiple vendors (par. [0041]) over the Internet (par. [0025]); determining a lowest posted price of the posted prices obtained in the previous step (par. [0051]); collecting one or more reverse bids (pars. [0025] and [0051]) from a second set of multiple vendors over the Internet (par. [0051]), wherein each reverse bid represents a price which is lower than the starting bid (pars. [0051] and [0053]); selecting a final bid from among the reverse bids (par. [0053]); and purchasing the goods or services using the final bid (par. [0053]). However, Offutt does not disclose the step of submitting a starting bid over the Internet which is lower than the lowest posted price. Rather, Offutt discloses "price-to-beat" messages which are formatted from the lowest prices that have been identified and

Art Unit: 3625

are available at the conclusion of the obtaining step (see par. [0051])). It is noted, that Offutt permits a buyer at a buyer interface to input "prices to beat" (see par. [0043]), but Offutt is still silent to such "prices to beat" being lower than the lowest posted price.

Regarding Barni: Barni, in a method similar to that of both claim 9 and Offutt (see Barni: col. 1, lines 9-20; col. 5, lines 15-24; and col. 6, lines 18-32), teaches the submission of a starting bid which is lower than a lowest posted price (see "104" at Fig. 7 and compare such bid ("5,000") to the posted prices ("8,000" and "6,950") for the same "40ft HCube" offered by "Sea Land" and "Evergreen", respectively, at Fig. 4).

Nonetheless, Barni fails to reasonably teach or suggest that the submission of such starting bid is intended to result in the collection of one or more reverse bids which represents a price which is lower than the starting bid. The submission of such starting bid in Barni effectively sets-off a negotiation (rather than a reverse bidding process) in which a vendor may either accept the starting bid or counter-offer by posting a seller bid that is higher than the starting bid--neither of which is a bid which represents a price which is lower than the

Art Unit: 3625

starting bid (see col. 7, lines 55-66; and compare seller bids (under "Price" and "Fees" columns of Fig. 11) for the "40ft HCube" to the original starting bid of "5,000" (shown submitted in Fig. 8)).

Accordingly, the teaching of Barni is non-analogous in the sense that Barni does not seek to collect reverse bids which are lower than the starting bid--a desired result of both the instant invention and of Offutt.

Additional references worthy of discussion are as follows:

References

Akst, Daniel: "Personal Technology; Web Site Offers Glimpse of Net's Marketplace Possibilities"; Los Angeles Times (Home Edition); Los Angeles CA; May 13, 1996; page 5 (hereafter: "Akst").

Manes, Stephen: "Off-Web dickering"; Forbes; New York NY; April 5, 1999; v163, i7; page 134 (hereafter: "Manes").

Applegate, Jane: "Cost-Cutting Doesn't Have to Hurt"; Chicago Sun-Times (Late Sports Final Edition); Chicago IL; November 24, 1993; page 60 (hereafter: "Applegate").

Art Unit: 3625

Turnis, Jane: "Shoppers who do homework get better price";
The Gazette; Colorado Springs CO; November 26, 1998; page A1
(hereafter: "Turnis").

Carlton-Foss (U.S. Patent No. 6,647,373 B1) (hereafter:
"Carton-Foss").

Stack (U.S. Patent No. 6,076,070) (hereafter: "Stack").

Ojha et al. (U.S. Patent No. 6,598,026 B1) (hereafter:
"Ojha").

Discussion

Certain of these references teach various aspects of the instant invention. For example, Akst and Manes, respectively teach using a known Internet search engine to compare the advertised (claim 8) or posted (claim 9) prices of multiple vendors in order to determine the most favorable advertised price (claim 8) or the lowest posted price (claim 9) for goods and services. Further, Applegate and Turnis, respectively, teach using an advertised (claim 8) or most favorable (claim 9) price in order to solicit at least one bid which is lower than a most favorable advertised price (claim 8) or a lowest posted price (claim 9) determined from a price comparison of advertised (claim 8) or posted (claim 9) prices of multiple vendors.

Art Unit: 3625

Additionally, Carlton-Foss teaches collecting one or more reverse bids from a set of vendors over the Internet, wherein each bid represents a price which is lower than a starting bid (claim 9).

However, none of these references, when taken alone or in combination, teaches the combined steps (as recited in claims 8 and 9) which include both the steps involved in obtaining a most favorable price (claim 8) or determining a lowest posted price (claim 9) and those steps involved in using the most favorable advertised price to solicit bids from multiple vendors to obtain a price lower than the most favorable advertised price (claim 8) or in collection one or more reverse bids from multiple vendors, wherein each reverse bid represents a price which is lower than the starting bid (claim 9).

Akst and Manes, for example, employ a negotiation technique which solicit bids from single vendors, respectively. The negotiation technique comprises the use of a most favorable or lowest posted price, but does not solicit bids from multiple vendors and does not result in price which is either lower than the most favorable price or a starting bid. This is because the single vendor is presented either the most favorable price or the starting bid and is expected to merely meet the most

Art Unit: 3625

favorable price or the starting bid or is expected to counter-offer with a higher price or bid.

Applegate and Turnis, for example, are silent to the use of a computer network (such as the Internet) for implementing the steps involved in obtaining or determining the most favorable advertised price or the lowest posted price, or the steps involved in soliciting bids or collecting one or more reverse bids--let alone the use of a common computer network (or the Internet) for implementing both activities.

Carlton-Foss, for example, does not disclose the manner in which any starting bid is determined--let alone that such starting bid is lower than any posted price associated with even one vendor.

Regarding Stack and Ojha:

Stack discloses a method and apparatus for on-line price comparison and price reduction of goods and/or services (col. 1, lines 6-13). However, Stack does not disclose soliciting bids from multiple vendors or collecting one or more reverse bids from multiple vendors. Rather, Stack allows a single vendor to reduce its own price for an item if its price for the item is

Art Unit: 3625

higher than another vendor's price for the item (col. 5, line 51-col. 6, line 25).

Ojha discloses a method for facilitating transactions between buyers and sellers on the World Wide Web (col. 1, lines 17-20). However, Ojha does not disclose one or more reverse bids from multiple vendors wherein each reverse bid represents a price which is lower than the starting bid. Rather, Ojha discloses simultaneous negotiations with multiple vendors. The negotiations are not based on a common starting bid and do not result in one or more bids which is lower than a common starting bid. Moreover, and similarly, the negotiations do not use a common most favorable advertised price to solicit bids from multiple vendors. Even though the result of any one negotiation with a single vendor may result in a price which is lower than the most favorable advertised price, it still remains that no common most favorable advertised price is used to solicit bids from multiple vendors. It is noted that Ojha allows for any vendor to reply to another vendor's negotiation. However, such reply is intended to provide an opportunity for other vendors to offer a competitive product, a bundle, or a related product (col. 17, line 46-col. 18, line 5). This is not construed as a bid on sought goods and services themselves.

Art Unit: 3625

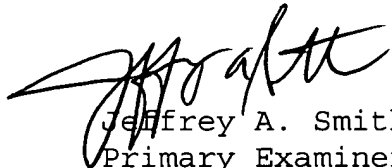
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Smith whose telephone number is (571) 272-6763. The examiner can normally be reached on M-F 6:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on (571) 272-7159. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3625

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey A. Smith
Primary Examiner
Art Unit 3625

jas